

I. **Claims Rejected Under 35 U.S.C. §102(b)**

Applicants respectfully traverse the anticipation rejection based on the following grounds.

Claims 1, 3, 9, 10 and 12 recite, *inter alia*, a dish drainer and a separate and discrete tray having a first deployed configuration. The tray is defined in the specification as being configured to collect, contain and redirect water falling from the dish drainer (page 7, lines 11-14). Claim 1 further recites that the discrete tray is compactable to a second storage configuration and positionable entirely within the interior of the dish drainer when the tray is in the second storage configuration. The second tray configuration reduces the space required to package, ship, display and store the dish drainer and tray, thereby providing a product cost saving (page 3, lines 15-18).

Halvorsen does not recite a dish drainer and a separate and discrete tray. Halvorsen does not teach or suggest a tray that can collect, contain and redirect water, much less a tray having a first deployed configuration or a second storage configuration in which the tray is positionable entirely within the interior of the dish drainer. Halvorsen simply discloses an annular stand A having a plurality of legs *a* and an annular seat *a'*. The annular stand A simply *supports* the colander (dish drainer) B and *does not act as a tray to collect and contain water falling from the colander B*. Moreover, the annular stand A *does not have a first deployed configuration or a second storage configuration of any kind, let alone one that provides for position of the stand entire within the colander B*. FIG. 5 in Halvorsen clearly shows the stand in a storage position, but still in its one and *only* configuration. The legs *a* are not positioned entirely within the colander B.

Because Halvorsen does not contain each and every element set forth in claims 1, 3, 9, 10 and 12, either expressly or inherently, these

claims cannot be anticipated<sup>2</sup> nor rendered obvious<sup>3</sup> thereby. These claims are therefore in condition for allowance, and withdrawal of the rejection is therefore respectfully requested.

## II. Claims Rejected Under 35 U.S.C. §103(a)

Claims 2, 4 and 11 have been rejected under 35 U.S.C. §103(a) as obvious over Halvorsen. Applicants respectfully traverse the rejection based on the following grounds.

Claims 2, 4 and 11 recite, *inter alia*, a dish drainer and a separate and discrete tray deployable in a first deployed configuration and compactable to a second storage configuration and positionable entirely within the interior of the dish drainer when the tray is in the second storage configuration.

As discussed above in Section I, Halvorsen does not teach or suggest all the limitations set forth in the claims. More specifically, Halvorsen does not teach or suggest a tray, much less a tray having a first deployed configuration or a second storage configuration storable entirely within the dish drainer. Because Halvorsen does not teach or suggest all of the claim limitations, claims 2, 4 and 11 cannot be rendered obvious<sup>3</sup> by the teaching of Halvorsen.

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<sup>2</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. §102 rejection. See MPEP § 2131.01.

<sup>3</sup> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Claims 13-15 and 17 have been rejected under 35 U.S.C. §103(a) as unpatentable over Halvorsen in view of U.S. Patent No. 5,242,054 (Todd). Applicants respectfully traverse the rejection based on the following grounds.

Claims 13-15 and 17 recite, *inter alia*, a dish drainer and a separate and discrete tray configurable in a first compacted storage configuration and a second deployed configuration, the tray being positionable entirely within the drainer interior when in the storage configuration. Claims 13-15 and 17 further recite a package that is sized to contain the drainer when the tray is in the compacted storage configuration and positioned in the drainer interior, and is not of sufficient size to contain the drainer and tray when the tray is in the deployed configuration.

Neither Halvorsen, as discussed above in Section I, nor Todd, taken alone or in combination, teach or suggest all the limitations set forth in the claims. More specifically the cited references do not teach or suggest a tray, much less a tray having a first compacted storage configuration or a second deployed configuration, the tray being positionable entirely within the drainer interior when in the storage configuration. The deficiencies in Halvorsen are discussed above. Todd simply discloses a modular wire rack 155 onto which small fragile items may be secured for shipment, in a package 180, and eventual display. Todd fails to disclose or suggest the same limitations that are missing from Halvorsen. Because the cited references do not teach or suggest the claimed limitations, whether taken alone or in combination with any teachings known in the art, claims 13-15 and 17 are not rendered obvious.

Claims 18 and 19 have been rejected under 35 U.S.C. §103(a) as unpatentable over Halvorsen in view of U.S. Patent No. 4,947,984 (Kaufman et al.). Applicants respectfully traverse the rejection based on the following grounds.

Claims 18 and 19 recite, *inter alia*, a dish drainer and a separate and discrete tray deployable in a first deployed configuration and


**CONCLUSION**

Pending claims 1-19, including withdrawn claims 5-8 and 16, are believed to be in condition for allowance in view of the foregoing amendments and remarks. Reconsideration and withdrawal of the claim rejections and allowance of claims 1-4, 9-15, and 17-19 are hereby respectfully solicited. Because claims 5-8 and 16 depend from an allowable *generic* base claim, the applicants also solicit reinstatement and allowance of these withdrawn claims.

The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

Respectfully submitted for,

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